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Alicia Falkenbach
Name
Alicia Falkenbach
Signature
July 22, 2005
Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Scott et al.

Examiner: Laurie A. Scheiner

Filed: June 4, 2001

Art Unit: 1648

Serial No. 09/873,881

For: Recombinant Multivalent Viral Vaccine

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

37 C.F.R. 1.132 Declaration

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The undersigned, Dr. Fred W. Scott, declares:

1. That I am a Professor Emeritus in the Department of Microbiology & Immunology at Cornell University, Ithaca, New York, and am the former Director of the Cornell Feline Health Center at the College of Veterinary Medicine, Cornell University.

2. That I have worked in the field of immunology and vaccine preparation for 41 years, as further evidenced by my attached Curriculum Vitae.

3. That I am an inventor on the above-referenced patent application.

4. That I have reviewed the Office Action dated February 22, 2005, and that I understand that the Examiner is refusing to accord the above-referenced application the July 1, 1991 priority date of U.S. Patent Application No. 07/726,609 ("the '609 application") because the Examiner contends the insertion of two exogenous genes into the thymidine kinase (TK) gene of a raccoon poxvirus genome is not enabled in the '609 application.

5. That one skilled in molecular biology, upon reading the '609 application, would know how to make a recombinant raccoon poxvirus ("RRPV") having more than one exogenous gene inserted into its TK site. One skilled in the art would know this because the '609 application demonstrates:

a) creation of a chimeric plasmid that includes a gene encoding a feline pathogen antigen (Example I, pages 24-25, and Figure 1); and

b) recombination of the chimeric plasmid with a raccoon poxvirus to create an RRPV having the gene encoding the feline pathogen antigen inserted into its TK site (Example II, pages 26-27, and Figure 2).

Further, the '609 application expressly states that an RRPV having two exogenous genes inserted into its TK site can be made (page 15, lines 21-28; page 42, lines 13-23; claim 5 and claim 8). Therefore, once the creation of a chimeric plasmid and its use for insertion of an exogenous gene into a raccoon poxvirus TK site had been described, one skilled in molecular biology would know how to make an RRPV which includes two exogenous genes inserted into its TK site. For example, upon reading the '609 application, a one skilled in molecular biology would know that a DNA fragment encoding two distinct feline pathogen antigens could be easily prepared and inserted into a plasmid using the methods described for making the chimeric plasmid in **a)** above. One skilled in molecular biology would also know that the chimeric plasmid with the two inserted genes could be recombined with a raccoon poxvirus using the method described in **b)** above to make an RPPV which includes the two exogenous genes in its TK site.

Therefore, upon reading the '609 application, one skilled in molecular biology would know how to make a chimeric plasmid and recombine it with a raccoon poxvirus to make an RRPV with two exogenous genes inserted in its TK site. Thus, an RRPV with two exogenous genes inserted into its TK is fully enabled by the '609 application.

6. That all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 101 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued therefrom.

Respectfully submitted,

7/20/2005

Date

Dr. Fred W. Scott